ams, 192 U. S. 440, 24 Sup. Ct., 408, 48 L. Ed. 513, reversing C. C. A., Ninth Circuit, 116 Fed., 324, 54 C. C. A., 196). Liability for the tort may also be released by the husband after its commission by his acceptance of compensation for the injury he has sustained. Hill *v.* Penna. R. R. Co., 178 Pa., 223, 35 Atl., 997, 35 L. R. A., 196, 56 Am. St. Rep., 754. If the wrongdoer has never been legally liable for the wrong, or if he has in any way been acquitted of the wrong, then the tort is no longer a cause of action on which the widow can prosecute her statutory right of action, and this is for the reason that the widow succeeds to her husband's cause of action —the tort—with all its infirmities, those that are inherent, and those that have been imposed upon it by her husband.' * * *

"The federal Employers' Liability Act differs from Lord Campbell's Act, and other similar statutes, in that the former does not in terms make the personal representative's right to maintain an action dependent upon the existence of a right of action in the decedent immediately before he died. The defendant in error's lack of right to maintain his suit in such a situation as the one under consideration is due, not to the decedent's lack, immediately prior to his death, of an enforceable right of action for the injury he sustained, but to the fact that the cause of action counted on has been extinguished by payment of the judgment recovered by the decedent for the wrong he suffered."

Privileged Communications—Statements of Counsel in Application for Pardon.—In Andrews *v.* Gardiner, 224 N. Y. 440, 121 N. E. 341, 2 A. L. R. 1371, the court of appeals of New York held that statements of attorney in an application for pardon on behalf of a client are not absolutely privileged.

The court said: "The question, therefore, is whether absolute privilege ought now to be extended to an application for a pardon. It was so extended by the court of civil appeals of Texas, in Connellee *v.* Blanton (Tex. Civ. App.), 163 S. W. 404, but we think erroneously. Such an application is not a proceeding in court, nor one before an officer having 'a tributes similar' to a court's. Royal Aquarium *v.* Parkinson, [1892] 1 Q. B. 431, 61 L. J., Q. B. N. S. 409, 66 L. T. N. S. 513, 40 W. R. 450, 56 J. P. 404. It is a petition for mere grace and mercy. It may be made by anyone, and without the convict's knowledge. It grows out of the action of the courts, but it seeks to reverse their action by an appeal to motives and arguments which are not those of jurisprudence. There are no clearly defined issues. There is often a most informal hearing. Sometimes there is argument by counsel. As often, the plea for mercy is made by wife or kin or friends. Whatever privilege belongs to counsel should belong also to them; the right to plead for clemency is not a monopoly of the bar. Even if counsel speaks, his words

are not 'spoken in office.' Rex *v.* Skinner, Lofft, 55. Nor are they subject to like restraints. At such a time, anything is pertinent that may move the mind to doubt or the heart to charity. It is not necessary that reason be convinced; it is enough that compassion is stirred. The range of possible inquiry should be confined within the limits of good faith. Where the test of the pertinent is so vague, there must be some check upon calumny. While convict and counsel act in good faith, they are immune; the privilege is lost when they defame with malice. There is no license, under cover of such an occasion, to publish charges known to be false, or put forward for revenge. We are not dealing here with statements made by witnesses required to attend a hearing (Prison Law [Consol. Laws, chap. 43], §§ 261, 262, 265); there is a distinction between the testimony of witnesses and voluntary complaints (Wright *v.* Lothrop, 149 Mass. 385, 390, 21 N. E. 963). We do not go beyond the case before us. Our ruling is in harmony with the tendency of courts to restrict the scope of absolute privilege in libel. Blakeslee *v.* Carroll, supra, at page 235 of 64 Conn., 25 L. R. A. 106, 29 Atl. 473; Odgers, Libel & Slander, pp. 230, 231. It is in harmony with rulings made where petitions have been submitted to the governor or the legislature for relief against oppression or the redress of other wrongs (Wright *v.* Lothrop, supra, at p. 390 of 149 Mass., 21 N. E. 963; Proctor *v.* Webster, L. R. 16, Q. B. Div. 112, 114, 55 L. J. Q. B. N. S. 150, 53 L. T. N. S. 765; Woods *v.* Wiman, 122 N. Y. 445, 25 N. E. 919; Cook *v.* Hill, 3 Sandf. 341; Maurice *v.* Worden, 54 Md. 233, 39 Am. Rep. 384); the oppression of a harsh or unjust judgment is not to be distinguished in this respect from any other abuse of power. The ruling gives just protection alike to suitor and to counsel, and charges them with liability only when the privilege is abused."

Workmen's Compensation Law—Injury Arising in Course of Employment.—In Eldridge *v.* Endicott, Johnson & Co., 177 N. Y. S. 863 the Supreme Court of New York held that where plaintiff's neck was slightly cut while being shaved at a barber shop, and on the following day, while working in defendant's tannery handling hides, symptoms of anthrax first appeared, his death from the disease was due to accidental injury "arising in the course of his employment."

The court said in part: "In the opinion written in the case, the commissioner says:

" I think it is fair to assume that he contracted anthrax in the course of his employment, and the question is: Can his death, under the circumstances, be attributed to an accidental injury arising out of and in the course of his employment?'

"The opinion is based upon the case of Bacon *v.* United States